

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 228

July 23, 1998, 9:16 a.m.
Page S-8817 Temp. Record

COMMERCE-JUSTICE-STATE/Indian Tribe Internet Gaming

SUBJECT: Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1999 . . . S. 2260. Craig modified amendment No. 3268 to the Kyl/Bryan amendment No. 3266.

ACTION: AMENDMENT REJECTED, 18-82

SYNOPSIS: As reported, S. 2260, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1999, will provide a total of \$33.239 billion in new budget authority, which is \$1.115 billion more than appropriated for fiscal year (FY) 1998 and is \$3.647 billion less than requested. The bill contains large spending increases for various law enforcement activities.

The Kyl/Bryan amendment, as amended, would prohibit Internet gambling. It would be illegal for a person knowingly to use the Internet or any other interactive computer service to place, receive, or otherwise make a bet or wager with any person, or to send, receive, or invite information assisting in the placing of a bet or wager with the intent to send, receive, or invite information assisting in the placing of a bet or wager. The penalty for a person violating this prohibition by placing a bet or wager would be up to three months imprisonment or the greater of three times the amount wagered, the total amount received as a result of such wagering, or \$500, or both. The penalty for a person violating this prohibition by operating a gambling business would be up to 4 years imprisonment or the greater of the amount received in wagers, \$20,000, or both. Permanent injunctions on transmitting bets or wagers or information to assist in wagering could be placed against violators of this prohibition. A court could require an Internet service provider to cancel the account of a person who violated this prohibition. Other technically feasible restrictions on Internet services could be required if they did not unreasonably interfere with access to lawful material at other online locations, unless the Internet service provider could show that they were not economically reasonable. Federal district courts would have original and exclusive jurisdiction. State attorneys general could institute proceedings. The definition of Internet gambling would not include: business transactions covered by the Securities and Exchange Commission (SEC); transactions subject to the Commodity Exchange

(See other side)

YEAS (18)		NAYS (82)				NOT VOTING (0)	
Republicans (9 or 16%)	Democrats (9 or 20%)	Republicans (46 or 84%)		Democrats (36 or 80%)		Republicans (0)	Democrats (0)
Campbell	Biden	Abraham	Hutchison	Akaka	Kennedy		
Cochran	Boxer	Allard	Inhofe	Baucus	Kerry		
Craig	Daschle	Ashcroft	Jeffords	Bingaman	Kohl		
D'Amato	Harkin	Bennett	Kyl	Breaux	Landrieu		
DeWine	Inouye	Bond	Lott	Bryan	Lautenberg		
Domenici	Johnson	Brownback	Lugar	Bumpers	Leahy		
Kempthorne	Kerrey	Burns	Mack	Byrd	Levin		
McCain	Moynihan	Chafee	McConnell	Cleland	Lieberman		
Stevens	Wellstone	Coats	Murkowski	Conrad	Mikulski		
		Collins	Nickles	Dodd	Moseley-Braun		
		Coverdell	Roberts	Dorgan	Murray		
		Enzi	Roth	Durbin	Reed		
		Faircloth	Santorum	Feingold	Reid		
		Frist	Sessions	Feinstein	Robb		
		Gorton	Shelby	Ford	Rockefeller		
		Gramm	Smith, Bob	Glenn	Sarbanes		
		Grams	Smith, Gordon	Graham	Torricelli		
		Grassley	Snowe	Hollings	Wyden		
		Gregg	Specter				
		Hagel	Thomas				
		Hatch	Thompson				
		Helms	Thurmond				
		Hutchinson	Warner				

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Act; contracts of indemnity or guarantee; contracts for life, health, or accident insurance; “rotisserie” or “fantasy sport” leagues that do not charge participation fees or that are limited to reasonable administrative fees for participation; information concerning parimutuel pools; any new reporting or analysis of wagering activity; any posting or reporting of any educational information on wagering; subject to restrictions to control access, otherwise legal intrastate wagers for a State lottery, a multi-State lottery, or a racing or parimutuel activity; or, subject to restrictions to control access, gambling in accordance with the Indian Gaming Regulatory Act that is conducted on Indian lands or in the applicable State in accordance with a Tribal-State gaming compact.

The Craig modified amendment would add that the prohibition would not apply to any lawful gaming conducted pursuant to the Indian Gaming Regulatory Act. Also, it would provide that any enforcement of the prohibition for actions that took place in whole or in part on Indian lands would be by the Federal Government.

Those favoring the amendment contended:

The Craig amendment has two parts, both of which we strongly support. First, it would provide an exemption for any gaming activity that is currently legal under the Indian Gaming Regulatory Act (IGRA). Such activities are closely regulated at the Federal, State, and tribal levels. Some of those activities are conducted through computers. For instance, there are 30 Indian tribes operating games like “Megabingo” and “satellite bingo” and dozens of tribes that operate parimutuel betting and other games that are authorized by and regulated under the IGRA. In fact, when Congress passed the IGRA after the 1987 *Cabazon* Supreme Court case, it specifically provided that bingo games may rely on or use electronic or technological aids. One tribe, the Couer d’Alene Tribe in Idaho, has entered into a State-Tribal compact to permit it to operate what is known as the National Indian Lottery. That lottery has so far withstood three separate Federal court tests. Further, it is not covered by the current Federal Wire Act, which outlaws some gambling over the phone lines. Without the pending Craig amendment, though, this regulated lottery would be made illegal by the Kyl amendment. We think that the Kyl amendment would seriously overreach by banning this lottery. It is very closely regulated and it is audited on a frequent basis by the accounting firm Arthur Andersen. Safeguards have been put in place so that only adults can participate. The problems that our colleagues are trying to prevent with other forms of Internet gambling just do not exist with this gambling that is taking place under the restrictions of the IGRA. Our colleagues did not mind including exemptions for other types of gambling that are closely regulated. Those types of gambling also happen to be supported by very powerful interests; our impression is that, once again, American Indians just do not have the political influence to protect their legitimate interests. The second part of the Craig amendment would provide that to the extent that enforcement actions are brought against Indian tribes for violations, those actions will be brought by the Federal Government. The *Cabazon* case clearly found that there are constitutional limits on the ability of States to regulate gaming on Indian lands. The Federal Government, with the IGRA, defined the ability of States to regulate some types of gaming on Indian lands in those instances that States and tribes enter into compacts on that gaming. The Kyl amendment, though, would greatly expand the ability of States to pursue enforcement actions against tribes. We do not think that it is wise to reopen this issue. A fair balance has already been reached. Overall, we are very supportive of the placing of restrictions on Internet gambling, and we do not want Indian tribes to be given special treatment. However, we do not believe that they are getting special treatment under the IGRA—they are getting fair treatment. The Craig amendment would preserve that fair treatment. We therefore urge its adoption.

Those opposing the amendment contended:

Our colleagues, in our opinion, are misreading both the IGRA and the Kyl amendment. All 50 State attorneys general have concluded that Internet gaming is not authorized under the IGRA. However, it is not possible under current law to stop such gaming, whether under the IGRA, the Federal Wire Act, or otherwise. If we were to agree to the Craig amendment, thereby specifically exempting Indian gaming from the ban on Internet gambling, the result would be that Indian tribes would end up with a monopoly on Internet gambling, because only they would not be banned. This amendment is so bad that it would nullify any other benefit that would come from the Kyl amendment. Internet gambling would continue to explode, and it would be under the exclusive control of Indian tribes. As for our colleagues’ concern that the Kyl amendment would increase State jurisdiction over Indian gaming, we think they are simply misreading the amendment. The States’ jurisdiction would still be limited to only those cases in which they had entered into gaming compacts with tribes to allow such jurisdiction. Thus, in our opinion, the Kyl amendment would not affect Indian rights under the IGRA; all it would do is treat them equally in its ban on Internet gambling. We thus strongly urge our colleagues to table the Craig amendment, which would turn the Kyl amendment from being a ban on Internet gambling to being an amendment to give Indians a monopoly over such gambling.